FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 315

KARL F. VOEHL, PETITIONER,

vs.

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, RESPONDENT.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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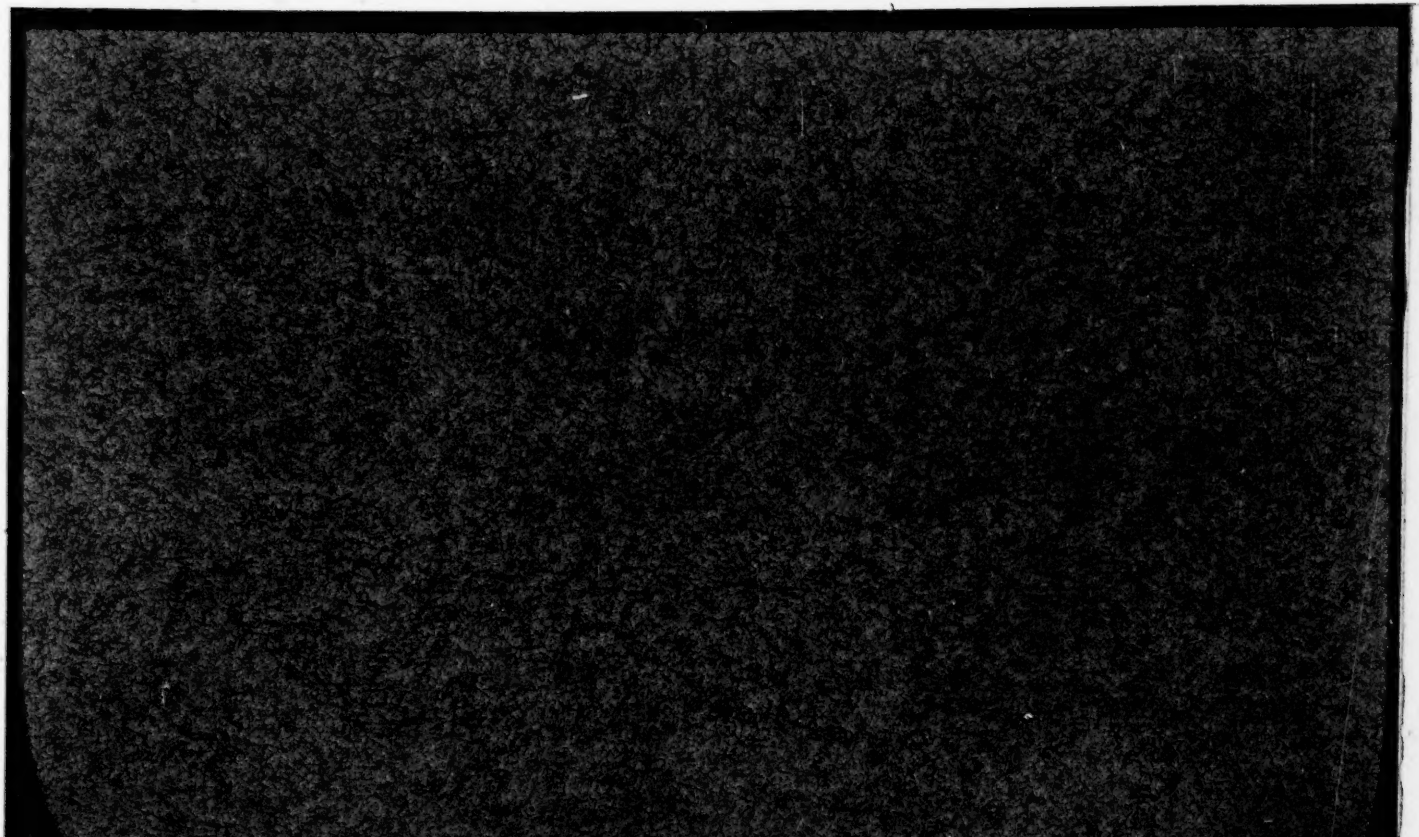

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Now comes the respondent, INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, a corporation, and upon the grounds hereinafter set forth, opposes petitioner's application for writ of certiorari to review the decision of the Court of Appeals of the District of Columbia in the above case.

SHORT STATEMENT.

Karl F. Voehl, petitioner, employed by the National Electrical Supply Company to supervise the handling

of refrigerators *at* his employer's warehouse, was injured on Sunday, April 6, 1930, at 8.30 a. m., while on his way from his home in Maryland to the warehouse in the District of Columbia. He was *driving his own automobile,* which overturned, as a result of a defect in the steering gear, *at a point several miles from the warehouse* (R. 2, 18, 69).

Under the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927 (44 Stats. 1424), which was made applicable to employments in the District of Columbia by Act of Congress approved May 17, 1928 (45 Stats. 600), Voehl applied to Deputy Commissioner Hoage for and was awarded compensation against respondent, the Insurance Company with which his employer carried compensation insurance (R. 52-55).

Pursuant to Section 21 of the Compensation Act, respondent filed a bill in equity in the Supreme Court of the District of Columbia to enjoin the enforcement of the award, on the ground that the award was "not in accordance with law" in that the injury did not arise out of or in the course of Voehl's employment (R. 1-7). The entire testimony taken before the Deputy Commissioner was attached to the bill as an exhibit (R. 9-52).

Deputy Commissioner Hoage filed a motion to dismiss the bill (R. 56-57) and such motion was granted by the Supreme Court of the District of Columbia (R. 58), but the decree dismissing the bill was reversed by the Court of Appeals (R. 74) for the reasons stated in its opinion (R. 69-73), 58 Fed. (2d) 1074.

Voehl now applies to this Court for a writ of certiorari to review the decision of the Court of Appeals.

ARGUMENT.

Petitioner does not base his petition upon any of the grounds set forth in Rule 38, Section 5 (*c*), of this Court, except the last one, that is, he claims that the Court of Appeals has not given proper effect to applicable decisions of this Court. Using his own words, petitioner asserts that the Court of Appeals "erred in refusing to give conclusive and final effect to the findings of fact of the Deputy Commissioner" and thus failed to follow the decisions of this Court in *Crowell* v. *Benson*, 285 U. S. 22, and *L'Hote* v. *Crowell*, 286 U. S. 528 (Petitioner's Brief, pages 4-5).

1. Facts undisputed. Court below disagreed only with the Deputy Commissioner's conclusions of law.

Under Equity Rule 28 of the Supreme Court of the District of Columbia, the Deputy Commissioner's motion to dismiss the bill was equivalent to a demurrer, which admitted that *all facts* alleged in the bill were true. The facts relating to the accident and injuries being, therefore, undisputed, there was no necessity for the Court of Appeals to "delve" into the evidence to "reweigh" those facts and the Court did not do so. Upon the undisputed facts, however, the Court below disagreed with the Deputy Commissioner's *conclusion of law* that the injury arose out of and in the course of petitioner's employment.

2. Only facts reviewed by Court below were "jurisdictional," following Crowell v. Benson, 285 U. S. 22.

At the oral argument of this case in the Court of Appeals on April 7, 1932, the decision which had been rendered by this Court on February 23, 1932, in the case of *Crowell* v. *Benson*, 285 U. S. 22, was fully discussed. The Court of Appeals understood that this Court had ruled that the Compensation Act "contemplates that as to questions of fact *with respect to injuries to employees within the purview of the Act*, the findings of the Deputy Commissioner, supported by evidence and *within the scope of his authority*, shall be final," but, in *Crowell* v. *Benson*, this Court also held that "rulings of the Deputy Commissioner upon questions of law are without finality" and "the Congress has not expressly provided that the determinations by the Deputy Commissioner of the *fundamental or jurisdictional facts* as to the locality of the injury and the existence of the relation of master and servant shall be final."

Whether Voehl was on duty; whether the injuries arose out of and in the course of his employment, and "whether the relation of employment existed" at the time of the accident, were "fundamental," "basic" or "jurisdictional" questions, which the Court of Appeals could and did properly review. The Deputy Commissioner was not clothed with unrestricted power to rule, with finality, upon the question as to whether or not he had jurisdiction of the case. If the injuries did not arise out of and in the course of Voehl's employment, the Deputy Commissioner was without juris-

diction and the Court was vested with complete power to correct his erroneous *conclusion* to the contrary.

The short *per curiam* opinion in *L'Hote* v. *Crowell*, 286 U. S. 528, upon which petitioner relies, follows and is entirely consistent with the ruling in *Crowell* v. *Benson*, 285 U. S. 22, upon which respondent relies.

3. Court of Appeals correctly held, upon undisputed facts, that injury did not arise out of and in course of employment.

It seems unnecessary here to examine the evidence in detail. The main facts were undisputed that the accident occurred while plaintiff was on his way from his home to his employer's warehouse, a fixed place of employment. The Court, therefore, correctly applied the settled *general rule* that, in going to and from work, an employee does not come within the purview of compensation statutes.

The Court below, in its opinion, further demonstrated that none of the *exceptions* to the general rule apply to this case. Voehl was not seeking ingress to his employer's premises, in fact he was not in close proximity thereto, but was *several miles distant therefrom;* the transportation was not furnished by his employer, as he was driving *his own automobile* over which the employer had no control; he was not engaged in a "travelling employment" at the time of the accident, even though it was his duty, at other times, to make special trips to the homes of customers for the purpose of servicing refrigerators.

The *main object* of Voehl's trip was to obtain a load of ashes for his own purposes and, immediately after

the accident, the failure to get the ashes "was the only thing that bothered him" (R. 14). It was not a part of Voehl's duty to remove the ashes (R. 29, 40).

4. Injury resulted from "traffic hazard."

The Court below was clearly justified in agreeing with the view *first* expressed by the Deputy Commissioner that "the hazard to which the claimant was subjected at the time he was injured was a *traffic hazard* and not one incidental to his occupation" (R. 8).

Where the employee "meets with an accident before coming to the employer's premises or his place of work, that is not a risk of his occupation, but of life generally" (*De Voe* v. *New York State Railways*, 218 N. Y. 318).

CONCLUSION.

It is, therefore, respectfully submitted that the decision of the Court of Appeals is in accord with the opinion rendered by this Court in *Crowell* v. *Benson*, 285 U. S. 22; that the *conclusion* or determination of the "jurisdictional question" by the Court of Appeals, that petitioner's injury did not arise out of and in the course of his employment, was fully justified by the undisputed facts, and the petition for writ of certiorari should, therefore, be denied.

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